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Catastrophic Clients

by K.C. Victor

There is something worse for lawyers than having an insufficient client base. It is having bad clients. When one has few or no clients, new clients can be sought and there will be time to take them on. Bad clients can result in your time being absorbed to no good purpose, your soul living in anguish and your professional reputation possibly being harmed.

How can a lawyer spot a bad client before an engagement? There are very few foolproof early warning signs. However, there are behaviors which should raise your hackles.

Most law firms of any size have a form which must be filled out in order to bring in a new matter. These forms perform a number of filtering functions. One question that always crops up on them concerns whether the new matter is being taken over from a previous lawyer or law firm. If this has happened more than once on the matter at hand or is a regular practice of this client, I suggest that you consider not even getting in the ring. However, if you want to take on such work, at least ask your potential client why he or she believes the previous representation was unsatisfactory. If it was entirely the previous lawyer's fault, beware.

There are, of course, legitimate reasons for clients to change their counsel midstream. However, many clients want to change counsel because they are unwilling to accept that their desired goal is impossible or nearly impossible to fulfill. A transactional client might be seeking a business deal that is too good to be true. There are litigations that clients want to pursue even when both the facts and the law are strongly against their position.

Usually clients presenting such situations are to be avoided at all costs. If you don't do so, it will be your fault when success was stymied. You may be punished with non-payment and undeserved gossip. If a client expects you to be a superhero, let them know that you hung up your cape when you left childhood.

In my opinion, the only time that a lawyer should even consider becoming engaged in this sort of near hopeless enterprise is when the client has made it clear that he or she also understands the futility of the situation and for some, perhaps irrational, reason nonetheless wants to proceed.

Occasionally clients engage in these Sisyphean enterprises for rational reasons. They may bring litigations in an attempt to alter established law. Suits are sometimes brought in the hope of generating an articulate decision setting out some, "but if ..." hypotheticals to use in a later, somewhat different, scenario. Nearly hopeless business deals may be pursued because a client is taking a chance or wants to become known in an industry. Still, lawyers involved with these situations would be wise to have a significant retainer and a planned payment schedule in place.

I was once presented with an analogous situation. Many years ago, I was invited to manage a State Senate campaign with these words from the candidate. “How would you like to run my losing State Senate campaign?” My candidate was running against a six-term incumbent in a district whose citizens were overwhelmingly registered in his opponent’s party. We ran a good campaign, made friends along the way, did better than expected and still lost. The candidate served his party by running the best race he could and I got paid. We all parted friends. In non-pro-bono legal representation this is rare.

Saying no to business is not always easy, but it can sometimes be the best thing to do. It is easy to fall into a money trap. Sometimes when a client presents an awful situation to a lawyer, the prospective counsel will make the mistake of asking for a large amount of money, believing that either the client will never agree to pay it or that the amount or that the work is indeed worth doing for that amount. It is important to remember that trying to scare a client away with fees and perhaps even your payment schedule doesn’t always produce the expected outcome. Before offering to do impossible, nearly impossible or distasteful work for a large fee, you should be certain that there actually is some amount of money for which you would accept the work. Sometimes, as in the old joke, you are only discussing the price when the answer should still be no.

Suppose you made a mistake and have begun to represent a nightmare client. What can be done? Sometimes, particularly in criminal cases, not much. If the client will be harmed by your quitting mid-stream, you may be forced to stay the course; the Rules of Professional Responsibility require continued representation. However, most of the time you may fire a client.

You may fire a client who has asked for the sixth impossible thing before breakfast or otherwise behaved like the Queen of Hearts. Suppose you had already gone through one hopeless bid with a client who then wanted to make another such bid. You do not have to be the lawyer. Neither do you have to get laughed out of court time and time again. You certainly do not have to risk your career via your reputation.

Sometimes a client threatens to sue you for malpractice on facts which would be summarily dismissed by any competent trier of fact. Do not try to argue your way out of that one. You have, unfortunately, already seen that the client is unreasonable. Let the client consider or bring a suit. If your choice is to get stuck with a bad client who resembles a leach or to have the leach painfully removed, removal may be the better option. It is probably time for the client and you to part ways - better late than never. You should, however, be aware that a fired client is unlikely to send any further payments. If you want a severed relationship, however, you are better off simply accepting that fact.

There is an old maxim about life, a variation of which applies to bad clients: If you lose the client, and perhaps your time and fee, don’t lose the lesson.